

FCC MAIL SECTION

Federal Communications Commission

DA 98-554

DISPATCHED Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 98-40
Table of Allotments,	)	RM-9240
FM Broadcast Stations.	)	
(Gurdon, Arkansas)	)	

## NOTICE OF PROPOSED RULE MAKING

Adopted: March 18, 1998

Released: March 27, 1998

Comment Date: May 18, 1998

Reply Comment Date: June 2, 1998

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of PGR Communications, Inc. ("petitioner"), licensee of Station KYXK(FM), Channel 224A, Gurdon, Arkansas, requesting the substitution of Channel 295A for Channel 224A at Gurdon, and modification of the license for Station KYXK(FM) accordingly. Petitioner states that it will apply for Channel 295A if it is allotted as requested, and if authorized, will promptly construct such improved facilities.

2. In support of the proposal, petitioner states that Station KYXK(FM) is currently precluded from operating with full Class A facilities due to minimum distance separation constraints.<sup>1</sup> However, petitioner asserts that the substitution of channels at Gurdon will enable Station KYXK(FM) to improve its Class A facilities to six kilowatts, and expand its coverage area to 26,204 persons in an area of approximately 2,506 square kilometers. Petitioner advises that the requested service improvement represents an increase of 8,553 persons and an area gain of approximately 822 square kilometers.

3. We believe the public interest would be served by soliciting comments on the proposed substitution of Channel 295A for Channel 224A at Gurdon, Arkansas, since the requested service

<sup>1</sup>In this regard, petitioner advises that Channel 224A was allotted to Gurdon under the former § 73.207(b) spacing requirements at which time Class A facilities were limited to 3.0 kilowatts. Petitioner states that under the present requirements of §73.207(b), its licensed site is shortspaced to Station KTKC(FM), Channel 224A, Springhill, Louisiana, at coordinates 33-00-28 and 93-28-43. Although a construction permit has been issued to Station KTKC(FM) to operate on Channel 225C2 at Springhill at coordinates 33-00-30 and 93-28-38 (File No. BMPH-970717IC), which, if granted, will remove the noted spacing conflict, Station KTKC(FM) remains licensed on Channel 224A at Springhill, and therefore precludes Station KYXK(FM) from attaining 6.0 kilowatt operation on Channel 224A at Gurdon.

improvement will enable Station KYXK(FM) to provide the community and its environs with an improved coverage FM service. A staff engineering study confirms that Channel 295A can be allotted to Gurdon in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's suggested site, located 4.9 kilometers (3 miles) northwest of the community at coordinates 33-56-59 and 93-11-08.<sup>2</sup>

4. As requested, we will propose to modify the petitioner's license for Station KYXK(FM) to specify operation on Channel 295A at Gurdon, Arkansas. Additionally, we will not accept competing expressions of interest in the use of Channel 295A at Gurdon since the procedures set forth in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984), and Section 1.420(g) of the Commission's Rules do not apply in this instance as no upgrade in facilities is requested.<sup>3</sup>

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Gurdon, Arkansas, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Gurdon, Arkansas	224A	295A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 18, 1998, and reply comments on or before June 2, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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<sup>2</sup>The site restriction is required to avoid a short spacing to the licensed site of Station KKOL-FM, Channel 296A, Hampton, Arkansas, at coordinates 33-32-23 and 92-34-59. Although Station KKOL-FM has been modified to specify operation on Channel 293C3 in lieu of Channel 296A at Hampton at coordinates 33-35-00 and 92-16-00, it remains operational on Channel 296A. See 5 FCC Rcd 5884 (1990).

<sup>3</sup>Channels of the same class are considered to be equivalent unless a demonstration has been made that a station cannot be built for such reasons as environmental or FAA constraints. See *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the

Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.